

Senate Study Bill 3216 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON BOLKCOM)

A BILL FOR

1 An Act relating to the administrative appeals process for
2 certain tax matters and a related study and report, and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

STATE BOARD OF TAX REVIEW

Section 1. Section 421.1, subsection 5, paragraph a, Code 2014, is amended to read as follows:

a. Upon its own motion or upon appeal by any affected taxpayer, the state board shall review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue under Title X, subtitle 2, for the identification of taxable property, classification of property as real or personal, or for assessment and ~~collection~~ valuation of ~~taxes~~ property by the department under Title X, subtitle 2, or an order to reassess or to raise assessments to any local assessor under Title X, subtitle 2, and shall affirm, modify, reverse, or remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order, or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits, and all other information pertinent to the decision, order, or directive from which the appeal is taken.

Sec. 2. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 3. APPLICABILITY. This division of this Act applies to appeals made to the state board of tax review on or after the effective date of this division of this Act, and appeals pending before the state board of tax review on the effective date of this division of this Act shall be governed by section 421.1, Code 2014.

DIVISION II

ADMINISTRATIVE APPEALS

Sec. 4. Section 421.23, Code 2014, is amended to read as follows:

421.23 Fees and mileage.

1 The fees and mileage of witnesses attending any hearing of
2 the department, including contested case hearings but excluding
3 small case hearings, pursuant to any subpoena, shall be the
4 same as those of witnesses in civil cases in district court.

5 Sec. 5. Section 421.60, subsection 2, paragraph g, Code
6 2014, is amended to read as follows:

7 g. A taxpayer may request in writing that a contested case
8 proceeding or small case proceeding, whichever is applicable,
9 be commenced by the department after a period of six months
10 from the filing of a proper appeal by the taxpayer. The
11 department shall file an answer within thirty days of receipt
12 of the request and a contested case proceeding or small case
13 proceeding, whichever is applicable, shall be commenced. In
14 the case of an appeal of an assessment, failure to answer
15 within the thirty-day time period and after a request has been
16 made shall result in the suspension of interest from the time
17 that the department was required to answer until the date that
18 the department files its answer. In the case of an appeal of
19 a denial of a refund, failure to answer within the thirty-day
20 time period, and after a request has been made, shall result in
21 the accrual of interest payable to the taxpayer at double the
22 rate in effect under section 421.7 from the time the department
23 was required to answer until the date that the department files
24 its answer.

25 Sec. 6. Section 421.60, subsection 4, paragraph a,
26 unnumbered paragraph 1, Code 2014, is amended to read as
27 follows:

28 A prevailing taxpayer in an administrative hearing other
29 than a small case proceeding, or a court proceeding related to
30 the determination, collection, or refund of a tax, penalty,
31 or interest may be awarded reasonable litigation costs by the
32 department, state board of tax review, or a court, incurred
33 subsequent to the issuance of the notice of assessment or
34 denial of claim for refund in the proceeding, based upon the
35 following:

1 Sec. 7. Section 421.60, subsection 6, unnumbered paragraph
2 1, Code 2014, is amended to read as follows:

3 The burden of proof with respect to assessments or denial
4 of refunds in contested case proceedings and small case
5 proceedings shall be allocated as follows:

6 Sec. 8. Section 421.60, Code 2014, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 11. *Small case proceedings.*

9 *a.* The department shall establish small case proceedings
10 to be used in lieu of the contested case proceedings provided
11 pursuant to this Title X and chapter 17A.

12 *b.* The department shall adopt rules relating to small case
13 proceedings, including but not limited to rules establishing
14 the types of actions of the director or department that shall
15 be considered eligible for appeal to the director under the
16 small case proceedings, the amount of tax at issue that shall
17 be considered a small case, and rules relating to the transfer
18 to small case proceedings of eligible cases pending before the
19 director on the effective date of this division of this Act.
20 Actions of the director or department under Title X, subtitle
21 2, shall not be eligible for the small case proceedings.

22 *c.* Use of the small case proceedings shall be at the
23 election of the taxpayer. The director may for good cause
24 refuse use of the small case proceedings by a taxpayer that
25 otherwise meets the requirements for use of the small case
26 proceedings.

27 *d.* Notwithstanding the provisions of this Title X, chapter
28 17A, or any other provision of law to the contrary, all of the
29 following apply to small case proceedings:

30 (1) Small case proceedings shall be informal. To the
31 extent consistent with the requirements of due process, the
32 department may by rule dispense with or otherwise modify
33 provisions relating to formal contested case proceedings,
34 including but not limited to the recording and transcribing of
35 proceedings, the creation of a detailed case record, ex parte

1 communications, and the rules of civil procedure.

2 (2) The presiding officer of a hearing under small case
3 proceedings shall be an administrative law judge assigned by
4 the division of inspections and appeals in accordance with the
5 provisions of section 10A.801.

6 (3) The decision of an administrative law judge shall
7 be considered the final action of the department under
8 chapter 17A, and shall not be reviewed by the director.
9 Notwithstanding section 17A.19 or any other provision of law to
10 the contrary, the decision of an administrative law judge in a
11 small case proceeding is not subject to judicial review.

12 (4) The decision of an administrative law judge in a small
13 case proceeding shall not be considered as precedent in any
14 other case, hearing, or proceeding.

15 (5) The administrative law judge shall notify the taxpayer
16 and the director by mail of the decision.

17 e. The provisions of section 422.70 shall also be applicable
18 to an administrative law judge acting under the authority of
19 this subsection.

20 Sec. 9. Section 424.1, subsection 4, Code 2014, is amended
21 to read as follows:

22 4. The board shall retain rulemaking authority, but may
23 contract with the department for assistance in drafting
24 rules. The board shall retain contested case jurisdiction
25 over any challenge to the diminution rate or cost factor. The
26 department shall conduct all other contested cases or small
27 case proceedings, whichever is applicable, and be responsible
28 for other agency action in connection with the environmental
29 protection charge imposed under this chapter.

30 Sec. 10. APPLICABILITY. This division of this Act applies
31 to appeals pending before the director of revenue on January
32 1, 2015, and to appeals made to the director of revenue on or
33 after January 1, 2015.

34 DIVISION III

35 STUDY REPORT

1 Sec. 11. ADMINISTRATIVE APPEALS PROCESS FOR TAX MATTERS —
2 REPORT. The department of revenue, in consultation with the
3 department of management and other interested stakeholders,
4 shall continue to study the independence, effectiveness,
5 and fairness of the state's current administrative appeals
6 processes for tax matters and shall make recommendations
7 for changes, if necessary, and shall additionally study the
8 desirability, practicality, and feasibility of replacing
9 components of these processes with new administrative appeals
10 processes for tax matters within the executive branch to
11 resolve disputes between the department of revenue and
12 taxpayers. The department of revenue shall prepare and
13 file a report, if necessary, detailing its findings and
14 recommendations with the chairpersons and ranking members of
15 the ways and means committees of the senate and the house of
16 representatives and with the legislative services agency by
17 January 8, 2015.

EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to the department of revenue's
22 administrative appeals process for tax and other matters.

23 DIVISION I — STATE BOARD OF TAX REVIEW. Division I relates
24 to the state board of tax review. The state board of tax review
25 (board) is an independent, bipartisan board consisting of
26 three members appointed by the governor and confirmed by the
27 senate. One of the powers and duties of the board is to review
28 final decisions of the director, including but not limited to
29 final decisions issued by the director in a contested case.
30 The board also has the original jurisdiction to review the
31 director's assessments and valuations of centrally assessed
32 property for purposes of property taxation, which means the
33 taxpayer appeals the assessment or valuation of the director
34 directly to the board. Both the taxpayer and the director have
35 the right to appeal a decision of the board to district court.

1 The division amends the types of decisions of the director
2 that may be reviewed by the board to specify that only
3 decisions made under Code Title X, subtitle 2 (property taxes),
4 may be appealed to the board. As a result, decisions of the
5 director with regard to income taxes, franchise taxes, sales
6 and use taxes, and various excise and other taxes will no
7 longer be appealable to the board and must instead be appealed
8 directly to district court.

9 The division takes effect upon enactment and applies to
10 appeals made to the board on or after the effective date of the
11 division, and appeals pending before the board on the effective
12 date of the division shall be governed by current Code section
13 421.1.

14 DIVISION II — ADMINISTRATIVE APPEALS. Division II relates
15 to the administrative appeals process of the department of
16 revenue by authorizing small case proceedings.

17 Under current law, when a taxpayer appeals a decision of the
18 director and no settlement can be reached between the parties,
19 the director grants a contested case hearing pursuant to the
20 provisions of Code chapter 17A (Iowa administrative procedure
21 Act). Following a contested case decision, the director issues
22 a final decision. The director is authorized to transfer
23 contested cases to an administrative law judge who presides
24 over the hearing and issues a proposed decision. When this
25 occurs, the director may adopt the proposed decision as the
26 final decision of the department, or may reverse or modify
27 the proposed decision according to the standards provided in
28 the Iowa administrative procedure Act. Following the final
29 decision of the director, a taxpayer may appeal the decision
30 to the state board of tax review or may seek judicial review of
31 the decision.

32 The division requires the department of revenue to adopt
33 small case proceedings that may be used at the election of the
34 taxpayer, and shall be in lieu of a contested case hearing.
35 The department is required to adopt rules relating to small

1 case proceedings, including but not limited to the types
2 of actions of the director and amounts of tax that will be
3 considered eligible for small case proceedings. The department
4 is also required to adopt rules relating to the transfer to
5 the small case proceedings of eligible cases pending before
6 the director on the effective date of the division. Actions
7 of the director or department relating to property taxes are
8 not eligible for the small case proceedings. The department
9 may refuse use of the small case proceedings to a taxpayer
10 for good cause. The division requires small case proceedings
11 to be informal and allows the department to dispense with
12 or otherwise modify provisions relating to formal contested
13 case proceedings such as the recording and transcribing
14 of proceedings, the creation of a detailed case record, ex
15 parte communications, and the rules of civil procedure. The
16 presiding officer of a hearing under small case proceedings
17 shall be an administrative law judge assigned by the department
18 of inspections and appeals. The decision of the administrative
19 law judge in a small case proceeding shall be considered the
20 final action of the department of revenue and shall not be
21 reviewed by the director or appealed to district court by the
22 taxpayer or the director. Furthermore, the decision of the
23 administrative law judge in a small case proceeding shall not
24 be considered as precedent in any other case, hearing, or
25 proceeding.

26 The division applies all the provisions of Code section
27 422.70, relating to the general hearing powers of the director,
28 to an administrative law judge acting under the authority of
29 the small case proceedings.

30 The division specifies that the provision of fees and
31 mileage of witnesses, and the awarding of litigation costs in
32 certain situations, shall not apply to small case proceedings.

33 APPLICABILITY. The division applies to appeals pending
34 before the director on January 1, 2015, and to appeals made to
35 the director on or after January 1, 2015.

1 DIVISION III — STUDY REPORT. Division III establishes
2 a report to be prepared and filed, if necessary, by the
3 department of revenue. The department of revenue, in
4 consultation with the department of management and other
5 interested stakeholders, shall continue to study the current
6 administrative appeals processes for tax matters and make
7 recommendations for changes if necessary, and also study the
8 possibility of creating new administrative appeals processes.
9 The report, if necessary, detailing any recommended changes
10 or findings shall be filed with the chairperson and ranking
11 members of the ways and means committees of the senate and the
12 house of representatives and with the legislative services
13 agency by January 8, 2015. A similar study and report was
14 conducted last year and filed on January 8, 2014, by the
15 department of revenue.